

verdict of guilty and direct forfeiture of the bail.

(c) Bail will be deposited in cash with the Clerk of the Court.

[37 FR 12384, June 23, 1972; 37 FR 13175, July 4, 1972]

§ 935.101 Seizure of property.

Any property seized in connection with an alleged offense (unless the property is perishable) is retained pending trial in accordance with the orders of the Court. The property must be produced in Court, if practicable. At the termination of the trial, the Court shall restore the property or the funds resulting from the sale of the property to the owner, or make such other proper order as may be required and incorporate its order in the record of the case.

§ 935.102 Information.

(a) Any offense may be prosecuted by a written information signed by the Island Attorney. However, if the offense is one for which issue of a citation is authorized by this part and a citation for the offense has been issued, the citation serves as an information.

(b) A copy of the information shall be delivered to the accused, or his counsel, as soon as practicable after it is filed.

(c) Each count of an information may charge one offense only and must be particularized sufficiently to identify the place, the time, and the subject matter of the alleged offense. It shall refer to the provision of law under which the offense is charged, but any error in this reference or its omission may be corrected by leave of Court at any time before sentence and is not grounds for reversal of a conviction if the error or omission did not mislead the accused to his prejudice.

§ 935.103 Motions and pleas.

(a) Upon motion of the accused at any time after filing of the information or copy of citation, the Court may order the prosecutor to allow the accused to inspect and copy or photograph designated books, papers, documents, or tangible objects obtained from or belonging to the accused, or obtain from others by seizure or process, upon a showing that the items

sought may be material to the preparation of his defense and that the request is reasonable.

(b) When the Court is satisfied that it has jurisdiction to try the accused as charged, it shall require the accused to identify himself and state whether or not he has counsel. If he has no counsel, but desires counsel, the Court shall give him a reasonable opportunity to procure counsel.

(c) When both sides are ready for arraignment, or when the Court determines that both sides have had adequate opportunities to prepare for arraignment, the Court shall read the charges to the accused, explain them (if necessary), and, after the reading or stating of each charge in Court, ask the accused whether he pleads "guilty" or "not guilty." The Court shall enter in the record of the case the plea made to each charge.

(d) The accused may plead "guilty" to any or all of the charges against him, except that the Court may at its discretion refuse to accept a plea of guilty, and may not accept a plea without first determining that the plea is made voluntarily with understanding of the nature of the charge.

(e) The accused may plead "not guilty" to any or all of the charges against him. The Court shall enter a plea of not guilty if the answer of the accused to any charge is such that it does not clearly amount to a plea of guilty or not guilty.

(f) The accused may, at any stage of the trial, with the consent of the Court, change a plea of not guilty to one of guilty. The Court shall then proceed as if the accused had originally pleaded guilty.

§ 935.104 Sentence after a plea of guilty.

If the Court accepts a plea of guilty to any charge or charges, it shall make a finding of guilty on that charge. Before imposing sentence, the Court shall hear such statements for the prosecution and defense, if any, as it requires to enable it to determine the sentence to be imposed. The accused or his counsel may make any reasonable statement he wishes in mitigation or of previous good character. The prosecution

may introduce evidence in aggravation, or of bad character if the accused has introduced evidence of good character. The Court shall then impose any lawful sentence that it considers proper.

§ 935.105 Trial.

(a) If the accused pleads not guilty, he is entitled to a trial on the charges in accordance with procedures prescribed in the Rules of Criminal Procedure for the U.S. District Courts, except as otherwise provided in this part, to the extent the Presiding Justice considers practicable and necessary to the ends of justice. There is no trial by jury.

(b) All persons shall give their testimony under oath or affirmation. The Senior Judge shall prescribe the oath and affirmation that may be administered by any Judge or the Clerk of the Court.

(c) Upon completion of the trial, the Court shall enter a judgment consisting of a finding or findings and sentence or sentences, or discharge of the accused.

(d) The Court may suspend any sentence imposed, may order the revocation of any Island automobile permit in motor vehicle cases, and may place the accused on probation. It may delay sentencing pending the receipt of any presentencing report ordered by it.

Subpart L—Appeals and New Trials

§ 935.110 Appeals.

(a) Any party to an action may, within 15 days after judgment, appeal an interlocutory order, issue of law or judgment, except that an acquittal may not be appealed, by filing a notice of appeal with the Clerk of the Wake Island Court and serving a copy on the opposing party. Judgment is stayed while the appeal is pending.

(b) Upon receiving a notice of appeal with proof of service on the opposing party, the Clerk shall forward the record of the action to the Wake Island Court of Appeals.

(c) The appellant shall serve on the opposing party and file a memorandum setting forth his grounds of appeal with the Wake Island Court of Appeals with-

in 15 days after the date of the judgment. The appellee may serve and file a reply memorandum within 15 days thereafter. An appeal and the reply shall be deemed to be filed when deposited in the U.S. mail with proper postage affixed, addressed to the Clerk, Wake Island Court of Appeals, at his address in Washington, DC. The period for filing of an appeal may be waived by the Court of Appeals when the interests of justice so require.

(d) The Court may proceed to judgment on the record, or, if the Court considers that the interests of justice so require, grant a hearing.

(e) The decision of the Court of Appeals shall be in writing and based on the record prepared by the Wake Island Court, on the proceedings before the Court of Appeals, if any be had, and on any memoranda that are filed. If the Court of Appeals considers the record incomplete, the case may be remanded to the Wake Island Court for further proceedings.

(f) The decision of the Court of Appeals is final.

§ 935.111 New trial.

A Judge of the Wake Island Court may order a new trial as required in the interest of justice, or vacate any judgment and enter a new one, on motion made within a reasonable time after discovery by the moving party of matters constituting the grounds upon which the motion for new trial or vacation of judgment is made.

[37 FR 12384, June 23, 1972; 37 FR 13475, July 4, 1972]

Subpart M—Peace Officers

§ 935.120 Authority.

Peace officers—

(a) Have the authority of a sheriff at common law;

(b) May serve any process on Wake Island that is allowed to be served under a Federal or State law. The officer serving the process shall execute any required affidavit of service;

(c) May conduct sanitation or fire prevention inspections;

(d) Inspect motor vehicles, boats and aircraft;